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In the Matter of the Arbitration

COIMEX TRADING (SUISSE) S.A.,                      05 Civ. 2630 (LLS)

Petitioner,       Memorandum Opinion

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1.

In this non-diverse action under the Federal Arbitration Act and Convention (9 U.S.C. §§ 2, 202), the determination whether there is an agreement to arbitrate depends on federal, not state, law. Thus, there is no wholesale adoption (as there might be in a diversity case) of New York's choice of law provisions. The body of federal law is "already well-

developed" and there is no need to refer to New York State principles of contract law which, if needed, would be only used as rules of decision. See Smith/Enron Cogeneration v. Smith Cogeneration, 198 F.3d 88, 95-96 (2d Cir. 1999)("as this is a federal question case under 9 U.S.C. § 203 and not a diversity case, we see no persuasive reason to apply the law of New York simply because it is the forum of this litigation"). As that court stated, ibid:

When we exercise jurisdiction under Chapter Two of the FAA, we have compelling reasons to apply federal law, which is already well-developed, to the question of whether an agreement to arbitrate is enforceable. See David L. Threlkeld & Co., 923 F.2d at 249-50 (holding Convention and FAA preempt Vermont statute); Genesco, Inc. v. T. Kakiuchi & Co., 815 F.2d 840, 845-46 (2d Cir. 1987)(applying federal common law in case arising under the Convention); Borsack v. Chalk & Vermilion Fine Arts, Ltd., 974 F.Supp. 293, 299 n.5 (S.D.N.Y. 1997)("[W]here jurisdiction is alleged under chapter 2 of the Federal Arbitration Act the issue of enforceability and validity of the arbitration clause is governed by federal law.")

2.

This court never reached the merits of the underlying contract dispute, so it is immaterial whether the winner of that dispute (by trial or arbitration) could then recover attorneys' fees under Swiss law.

Swiss law has no application to an award of attorneys' fees on the separate ground that Coimex's petition was

Bratt, No. 98 Civ. 9060, 2000 U.S. Dist. LEXIS 12774, at \*2  
(S.D.N.Y. Sept. 5, 2000), aff'd, No. 00-9395, 2001 U.S. App.  
LEXIS 20559 (2d Cir. June 19, 2001). As stated by Judge Friendly  
in Conte v. Flota Mercante Del Estado, 277 F.2d 664, 672 (2d Cir.  
1960):

. . .no authority is needed for the proposition that a  
court will tax ordinary court costs in accordance with  
its own practice rather than that of the state where  
the claim arose. . . . We think the same rule should  
govern with respect to the fees of counsel, also  
officers of the court. As pointed out in Goodhart,  
Costs, 38 Yale L.J. 849, 872-77 (1929), the American  
practice of generally not including counsel fees in  
costs was a deliberate departure from the English  
practice, stemming initially from the colonies'  
distrust of lawyers and continued because of a belief  
that the English system favored the wealthy and unduly  
penalized the losing party. On a matter so intimately  
related to judicial administration the forum will  
follow its own policy.

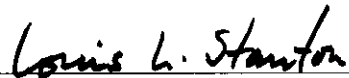
3.

In the parties' competition to file unpersuasive  
applications, the honors are about equal. Coimex sought  
arbitration, with no written agreement to arbitrate. Cargill  
sought attorneys' fees under Swiss law, which does not apply.

No costs will be allowed to either side.

So ordered.

DATED: New York, New York  
May 19, 2005

  
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LOUIS L. STANTON  
U.S.D.J.